

ESTTA Tracking number: **ESTTA488354**Filing date: **08/09/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	North Country Seed, LLC		
Entity	Limited Liability Company	Citizenship	Minnesota
Address	501 Main St P.O. Box 548 Ormsby, MN 56162 UNITED STATES		

Attorney information	Brent E. Routman Merchant & Gould, P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES broutman@merchantgould.com Phone:612.336.4619
----------------------	---

Registration Subject to Cancellation

Registration No	3488943	Registration date	08/19/2008
International Registration No.	NONE	International Registration Date	NONE
Registrant	DK International Food A/S Niels Bohrs Vej 45 Stilling; DK-8660 Skanderborg DENMARK		

Goods/Services Subject to Cancellation


Class 029. All goods and services in the class are cancelled, namely: Dairy products excluding ice cream, ice milk and frozen yogurt; cheese and soy milk, namely soy-based food beverage used as a milk substitute
--


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1575374	Application Date	04/18/1989
Registration Date	01/02/1990	Foreign Priority Date	NONE
Word Mark	BETTER-LIFE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 1989/03/17 First Use In Commerce: 1989/03/17 UNPROCESSED FIELD GRAIN Class 036. First use: First Use: 1989/03/16 First Use In Commerce: 1989/03/16 GRAIN BROKERAGE SERVICES

U.S. Registration No.	3771535	Application Date	10/07/2009
Registration Date	04/06/2010	Foreign Priority Date	NONE
Word Mark	BETTER-LIFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1989/03/17 First Use In Commerce: 1989/03/17 unprocessed field grain		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BETTER LIFE		
Goods/Services	meats, pork, and poultry.		

Attachments	73794080#TMSN.gif (1 page)(bytes) 77843309#TMSN.jpeg (1 page)(bytes) Petition to Cancel BETTER LIFE.pdf (4 pages)(118638 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ber/
Name	Brent E. Routman
Date	08/09/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

North Country Seed, LLC .)	
)	
Petitioner)	Cancellation No. _____
)	
vs.)	Mark: BETTER LIFE
)	
DK International Food A/S Aktieselskap (A/S))	
)	Reg. No. 3,488,943
Registrant)	
)	

PETITION TO CANCEL

North Country Seed, LLC a Limited Liability Company, having its principal place of business at 501 Main St., P.O. Box 548, Ormsby, Minnesota 56162 (hereinafter referred to as “Petitioner”), believes that it is, or will be, damaged by the continued existence of Registration No. 3,488,943 for the mark BETTER LIFE owned by DK International Food A/S Aktieselskap (A/S) (hereinafter referred to as “Registrant”), and hereby petitions to cancel said registration.

The grounds for cancellation are as follows:

1. Petitioner, North Country Seed, LLC is a Limited Liability Company, duly organized and existing under the laws of the State of Minnesota.
2. Upon information and belief, Registrant, DK International Food A/S Aktieselskap (A/S), is a company organized and existing under the laws of Denmark, and doing business at Niels Bohrs Vej 45 Stilling; DK-8660 Skanderborg DENMARK.
3. Registrant has obtained a registration on the Principal Register for the mark BETTER LIFE, Registration No. 3,488,943, for “Dairy products excluding ice cream, ice milk and frozen yogurt; cheese and soy milk, namely soy-based food beverage used as a milk substitute” alleged

to have been filed on May 16, 2007, allegedly claiming benefit and priority to a Danish application filed on May 1, 2006.

4. Since at least as early as March 16, 1989, Petitioner, or its predecessors in interest, has used the mark BETTER LIFE, or marks incorporating the words BETTER LIFE, in connection with farm products and farm product services, namely, unprocessed field grain and grain brokerage services.

5. Petitioner is the owner of the following federal registrations for the mark BETTER LIFE, or marks incorporating the mark BETTER LIFE, Registration Nos. 1575374 and 3771535 for “unprocessed field grain and grain brokerage services” in Classes 31 and 36.

6. The marks shown in the Petitioner’s registrations and the date of first use of the mark in the marketplace or application has a first use date, constructive use date, or filing date prior to the filing date of the Registrant’s registration or any earlier date of actual use of the mark shown in the Registrant’s registration upon which Registrant can rely.

FIRST CLAIM FOR RELIEF
(Likelihood of Causing Confusion, Mistake, or Deceiving With A Mark Previously Used in the United States by Another and Not Abandoned)

7. Petitioner repeats and realleges the allegations contained in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

8. The mark shown in the registration sought to be cancelled so resembles the "BETTER LIFE" mark previously used in the United States by the Petitioner, when used or in connection with the goods identified in the registration sought to be cancelled, to cause confusion, to cause mistake, or to deceive, and Registrant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

9. Petitioner will be damaged by the continued registration of the mark shown in the registration sought to be cancelled because continued registration will give Registrant prima facie evidence of the validity of its confusingly similar mark and the exclusive nationwide right to use its confusingly similar mark in commerce in connection with the goods identified in the registration sought to be cancelled, in derogation of Petitioner's rights in its "BETTER LIFE" marks.

SECOND CLAIM FOR RELIEF
(Likelihood of Causing Confusion, Mistake, or Deceiving With Registered Trademarks)

10. Petitioner repeats and realleges the allegations contained in preceding paragraphs 1-9, inclusive, as if fully set forth herein.

11. The mark shown in the registration sought to be cancelled so resembles the mark shown in Reg. Nos. 1575374 and 3771535 as to be likely, when used on or in connection with the goods identified in the registration sought to be cancelled, to cause confusion, to cause mistake, or to deceive, and Registrant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

12. Petitioner will be damaged by the registration of the mark shown in the Registrant's registration because continued registration will give Applicant prima facie evidence of the validity of its confusingly similar mark and the exclusive nationwide right to use its confusingly similar mark in commerce in connection with the goods identified in the registration sought to be cancelled, in derogation of Petitioner's rights in its registered marks.

WHEREFORE, North Country Seed, LLC asks that its petition to cancel the registration to be sustained and that the registration of the Registrant's mark be cancelled.

Please charge the filing fees for this application to Deposit Account No. 13-2725 and direct all correspondence and communications to the undersigned.

Respectfully submitted,

North Country Seed, LLC

By its Attorney(s),

Merchant & Gould, P.C.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910
Telephone: (612) 332-5200

Dated: August 9, 2012

By: /ber/
Brent E. Routman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION TO CANCEL was served upon the Registrant, DK International Food A/S Aktieselskap (A/S), by mailing a copy of the Petition to Cancel to the Registrant Niels Bohrs Vej 45 Stilling; DK-8660 Skanderborg DENMARK and to its counsel *Lawrence E. Abelman*, Abelman Frayne & Schwab 666 Third Avenue New York, NY 10017 via First Class mail prepaid this 9th day of August 2012.

/ber/
Brent E. Routman
Merchant & Gould, P.C.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910
Telephone: (612) 332-5200